

In the Matter of Merchant Mariner's Document No. Z-1055513 and all
Documents in Dispute
Issued to: Jerry Murphy

DECISION OF THE COMMANDANT
UNITED STATES COAST GUARD

1190

Jerry Murphy

This appeal has been taken in accordance with Title 46 United States Code 239 (g) and Title 46 Code of Federal Regulations 137.11-1.

By order dated 7 October 1959, an Examiner of the United States Coast Guard at San Francisco, California revoked Appellant's seaman documents upon finding him guilty of misconduct. The specification found proved alleges that while serving as an ordinary seaman on board the United States SS GOLDEN MARINER under authority of the document above described, on or about 10 January 1959, Appellant assaulted and battered a fellow crew member, carpenter Kenneth Small, by kicking him. Three other specifications were dismissed by the Examiner during the course of the hearing.

At the hearing, Appellant was represented by counsel of his own choice. Appellant entered a plea of not guilty to the charge and each specification.

The Investigating Officer introduced in evidence the testimony of several witnesses including carpenter Small and a physician's deposition which relates the injuries suffered by Small. In his testimony, Appellant admitted being in Small's room at the time in question but denied having kicked or otherwise abused him.

At the end of the hearing, the Examiner rendered the decision in which he concluded that the charge and one specification had been proved. An order was entered revoking all documents issued to Appellant.

FINDINGS OF FACT

On 10 January 1959, Appellant was serving as an ordinary seaman on board the United States SS GOLDEN MARINER and acting under authority of his Merchant Mariner's Document No. Z-1055513 while the ship was at sea.

About 2130 on this date, Appellant and several other crew members engaged in a heated argument punctuated with drinks of sake. Appellant and Small did not agree with respect to the matters under discussion. They were prepared to settle their

differences by fighting when Small was knocked unconscious and his face injured with glass. Somehow, Small left, went to his own room, and lay on the deck.

At approximately 2330, Appellant entered Small's room while he was still lying, helpless and bloody, on the deck. Nobody else was in the room. Appellant told Small that it was lucky he "didn't go over the side". Appellant then delivered two hard kicks to Small's rib and left the room. As a result of this, Small received two fractured ribs which caused considerable pain. Small struggled to his bunk and his condition was not known to the ship's officers until it was reported at 0930 the next morning by a member of the crew who saw Small in his bunk. Later in the day, Small was hospitalized at Kobe, Japan.

Appellant has no prior record with the Coast Guard.

BASES OF APPEAL

This appeal has been taken from the order imposed by the Examiner. It is urged that the evidence is insufficient to sustain the specification found proved. Alternatively, the order of the Examiner is excessive and arbitrary.

APPEARANCE: Edward L. Cragen, Esquire, of San Francisco, California of Counsel.

OPINION

The fact that Small suffered two fractured ribs is established by the deposition of the medical doctor at Kobe who examined Small before he was removed from the ship to the hospital.

The question of the sufficiency of the evidence was an issue of credibility to be resolved by the Examiner who heard and observed the witnesses. The Examiner stated that he believed Small's statements, that he was kicked by Appellant, since Small appeared to testify in an honest and frank manner. Appellant's denials of Small's version were rejected by the Examiner. I agree with the Examiner's conclusions because Appellant admitted he was in Small's room; there is no other reasonable explanation in the record for Small's fractured ribs except that he was kicked; and he testified positively that Appellant was the guilty party rather than some other person who might have been in the room about the same time. Hence, Small's testimony constitutes substantial evidence that Appellant committed the alleged offense.

I do not think the order of revocation is excessive. Appellant not only failed to report a seaman who was lying on deck in a helpless and injured condition, but he increased Small's suffering by kicking him. This stamps Appellant as a man with a vicious and brutal character. Since such men are undesirable as merchant seamen for obvious reasons, the order will be sustained.

ORDER

The order of the Examiner dated at San Francisco, California, on 7 October 1959, is
AFFIRMED.

A.C. Richmond
Admiral, United States Coast Guard
Commandant

Dated at Washington, D.C., this 26th day of August, 1960.